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Licensing and regulation of Indigenous childcare services

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THE FOCUS IN THIS ARTICLE is on licensing and regulation requirements of Indigenous childcare services and the impact they may have on the provision of quality child care for the children, families and communities being served. Specifically, it focuses on key factors that both contribute towards, and serve as barriers to, the provision of quality care through licensing and regulation requirements. The paper draws upon a national consultation funded by the Australian Government and conducted throughout 2005 and 2006 to respond to this issue. In recognition of the heterogeneous nature of Indigenous communities and families, the research methods included focus groups, community consultations and interviews with other stakeholders in the childcare sector nationally in order to identify these key factors. An analysis of national and international literature on the research theme was conducted. The research findings highlight a number of key factors in the licensing and regulation requirements that serve as barriers to the provision of quality care for Indigenous children. These include the lack of culturally appropriate child care that capitalises on Indigenous knowledges (including the contextual nature of 'quality') and community capacity building, the lack of flexibility required to address some of the unique needs of different communities in Australia, and the lack of adequate support and resources.

Introduction

National and international evidence points to the positive impact of high-quality early education and care programs on young children's social, emotional and cognitive wellbeing; their transition to school; their future life chances and social mobility; and on society generally (Karoly, Kilburn & Cannon, 2006; Lynch, 2005; OECD, 2006; Pocock & Hill, 2007; Press, 2006; Shonkoff & Phillips, 2000; Thorpe et al., 2004). Summarising some of the literature, the OECD (2006) notes: 'A basic principle is that learning in one life stage begets learning in the next. Investment in the foundation stage of early childhood increases the productivity of the next stage and so on ... The early childhood or foundation stage of learning is of major importance' (p. 37). For these reasons, among others, early childhood is high on the political agenda of many countries, with attention being paid to the issue of quality and the processes for improving and maintaining high standards in all services for young children, including the early childhood education and care sector (OECD, 2006).

In the Australian context, the overarching aim of the regulatory and operational childcare frameworks is to safeguard the achievement and maintenance of quality care (NCAC, 2009). However, their contribution to meeting the diverse, often special, needs of all communities in Australia should be considered with caution. The following review of the current literature on licensing and regulation requirements reports on the findings from broad-based national consultations with Indigenous communities and service providers. This was funded by the Australian Government in 2005. The purpose of the consultations was to identify the existing barriers to the provision of quality Indigenous child care and to make recommendations for possible models which would better address the needs of Indigenous communities across a range of indicators and measures. Results from that larger research project have been published separately (Hutchins, Saggers & Frances, 2009a, 2009b; Sims, Saggers, Hutchins, Guilfoyle, Targowska & Jackiewicz, 2008), but one aspect of the brief for the consultations included

attention to Indigenous perspectives on licensing and regulation requirements in childcare services, and it is this we address in this paper.

Contribution of regulations to the achievement of quality

In terms of regulatory requirements, the concept of quality is largely determined by the outcomes sought by government policy and the corresponding available resources for supporting care and education services for young children (Press and Hayes, 2000, p. 30). However, understandings of quality care reflect 'particular social and cultural contexts [which] may not be considered universally applicable' (Press & Hayes, 2000, p. 28); thus there can be no consensus about what quality care really is and how it can be measured. Dahlberg, Moss and Pence (1999), for example, argue for the existence of multiple understandings of quality, at the same time as highlighting the hegemonic way quality is used to define a generalisable standard against which a service may be judged (p. 107). In the Australian context it has been argued that this standard reflects 'white, middle-class' values rather than the diversity of cultural contexts and needs which exist across the country (Bown, Fenech, Giugni & Millei, 2008; Tayler, Wills, Hayden & Wilson 2006). Press (2006), among others, refers to the multidimensional aspect of quality within early childhood education and care services, both in manifestation and in outcomes. Press notes how quality can exist across a continuum from poor to excellent with concomitant outcomes which, at one end, place children at risk, and, at the other, provides them with 'a dynamic space ... with caring and nurturing learning programs' (p. 30). Overall, however, there is a general expectation that early childhood institutions will protect children's wellbeing and contribute to their optimal development (Press and Hayes, 2000; Press, 2006).

The literature highlights different aspects of quality that need to be addressed when setting standards and administering quality assurance processes if successful outcomes are to be achieved. These include: issues related to the structure of the care system, such as child–staff ratio, group size, staff qualifications, staff development and training. They also include issues related to the processes of care, such as the promotion of positive, nurturing and healthy environments; supply of professional development and support to services; monitoring processes including inspection; and issues related to *contextual sensitivity*, which would include attention to local needs and context; and service provision for and access by special groups (Bown et al., 2008; Colbert, 2005; OECD, 2006; Press, 2007; Tayler et al., 2006). For these standards to be robust—rather than merely serving as minimum requirements—it has

been argued that they need to be in line with current research and changing practice that identifies indicators of quality (Bown et al., 2008; Colbert, 2005; NCAC, 2009; OECD, 2006). Otherwise, as Colbert (2002) has stated, 'policies keeping regulations at a minimum and exempting [certain] categories of providers from licensing encourage the use of lower quality informal and unregulated care' (p. xiv).

Owing to the highly regulated nature of Australian child care, it can be argued that its quality is being monitored. How well the existing licensing requirements contribute to the quality of Indigenous child care, however, needs to be considered, given the contextual nature of quality and the diversity of childcare needs within Australian populations.

The Australian childcare licensing and regulation frameworks

Australia's current approach to quality assurance in child care involves regulatory and operational frameworks at three levels of government—the Australian Government, state and territory governments and, to a lesser extent, local government. This system spans minimum quality standards—based on children's services regulations developed by each of the states and territories—through to a national quality assurance system promoting continuous quality improvement (OECD, 2006; Tayler et al., 2006). National Childcare Standards, which aimed at achieving Australia-wide consistency in the provision of childcare services, were endorsed in 1993 for centre-based day care, and in 1995 for family day care and outside school hours care. These standards were incorporated into regulations of all states and territories, with their respective regulatory requirements set at or above the standards (Tayler et al., 2006). State and territory regulations establish the minimum conditions services must comply with in order to obtain a licence to operate. Licensing provides a legal base below which no centre is permitted to function, and monitors the most readily measured indicators, such as health and safety, the amount and arrangement of space, the range of equipment, number and ages of children, child–staff ratio, staff qualifications, and record-keeping (Tayler et al., 2006). In addition, different sets of regulations have been developed within the states and territories to provide for the various types of childcare services. For example, in Western Australia there are five sets of separate regulations, legislated by the *Child Care Services Act 2007*, which apply to the following services: Child Care (centre based); Outside School Hours Care; Family Day Care; and Outside School Hours Family Day Care. Similar sets of regulations operate in other Australian jurisdictions. Owing to this multilayered approach, no one unified system of ensuring quality of care nationwide exists.

This situation is due to change, however, with the commitment by the current Australian Government and state and territory governments to the development of a new national system to ensure consistent quality of early childhood care and education across childcare services and preschools. The *National Quality Framework*, which will replace the current licensing and accreditation processes, has been agreed by the Council of Australian Governments (COAG) and is expected to be implemented progressively from July 2010 and become mandatory from January 2012 (COAG, 2009).

Regulatory barriers to the provision of Indigenous child care

The proposal to develop a new national system of quality childcare standards provides an opportunity to reconsider the needs and aspirations of Indigenous families and service providers and to ensure that these are adequately reflected in the development of future licensing and regulation requirements. During the submissions phase of the development of the *National Quality Framework*, however, concerns were raised at the lack of reference to the diversity of the Australian population and the danger that this could discriminate against particular types of services and populations (for example, Bown et al., 2008; NCAC, 2009). This continues to be an important issue, as it has been noted how the diverse needs of communities in different states and territories, and in particular of the communities living in extremely remote and isolated areas, are not necessarily being reflected in the *current* regulatory and licensing standards. Indeed, one of the most frequently recurring themes throughout the consultations for this study was that current regulations lack the flexibility required to address some of the unique needs of different communities in Australia, in particular as they apply to Aboriginal and Torres Strait Islander populations. Examples of barriers that legislation and licensing standards can create for Indigenous child care have been reported in the literature and relate to issues ranging from differences in understandings and conceptualisations of quality care; the shortage of qualified Indigenous childcare staff; the general lack of workplace flexibility; to a lack of adequate resources (Meeting of representatives of Aboriginal and Torres Strait Islander childcare workers, Sydney, 26–27 May, 1994, cited in the Law Reform Commission Interim Report, 1994; Productivity Commission, 2005; Tayler et al., 2006; Trigwell, 2000).

Adaptation of licensing standards to address Indigenous childcare needs

There are examples of state and territory government attempts to meet the diverse childcare needs of Indigenous populations. In the mid-1990s, for example,

the Northern Territory Government introduced the 'innovative' funding for Indigenous remote area childcare services which resulted in the Australian Government's Innovative Child Care Scheme. This initiative, having grown out of the 1992–1996 National Childcare Strategy, reflected the recognition at state/ territory and national levels that a new approach to service development was required in order to facilitate the unique needs of the Aboriginal communities in remote areas. Emphasising the need for change in many areas, 'particularly with regard to funding, service development and appropriate licensing expectations' (Fasoli et al., 2004, p. 25), a different type of service emerged. Such services were designed to meet the 'local needs and conditions and to reflect community cultural expectations' (Fasoli et al., 2004, p. 12).

A 2004 study of the innovative children's services in the remote areas of the Northern Territory describes how, with intensive and integrated departmental support and training which lasted for more than a year, four targeted innovative services reached 'their fully operational and licensed status. The standard "conditions of license" for childcare services were adapted to enable these ... services to develop in a more locally appropriate way' (Fasoli et al., 2004, p. 26). The study shows that the adapted 'licensing requirements have had a strong effect on practices in centres where they apply' (Fasoli et al., 2004, p. 189). This includes, for example, improved hygiene standards, development of written programs, provision of some child-focused activities and to the improvement of the general quality of staff– child interactions. Although some of the innovative services in the remote areas of the Northern Territory, such as Jobs, Education and Training (JET) crèches, are not required to comply with the Northern Territory standards for childcare centres, they need to meet certain very basic requirements, and some of these services have been able to transform into licensed childcare centres (Fasoli et al., 2004, p. 217).

There are also examples of how the licensing process and related documentation can be made more appropriate for Aboriginal and Torres Strait Islander peoples. One such example is that developed by the Northern Territory Health Services, Family and Children Services in 2001 (Territory Health Services, 2001), the *Workbook for child care centres*. The workbook is written in simple, user-friendly language and explains the purpose of licensing from the perspective of quality care for children, making the process of obtaining a licence more relevant to Indigenous parents, staff and community members.

In 2002, the federal Minister for Children and Youth Affairs announced that Community Link Australia would undertake national consultations to inform the redevelopment of what was then known as the Child

Care Support Broadband. Community Link Australia's final report identified a number of gaps in childcare provision, including the unequal access to child care for Indigenous children, and gave a high priority to improving and extending the provision of child care for Indigenous children, families and communities. Subsequently, in 2004, the Minister launched the new Child Care Support Program, which included the development of an Indigenous Child Care Plan (of which this research was a part). Drivers for the development of the Indigenous Child Care Plan included:

- a request by the Secretariat of National Aboriginal and Islander Child Care (SNAICC) to the Child Care Reference Group for the development of an Indigenous Child Care Plan

- the stated commitment by the Australian Government through the Stronger Families and Communities Strategy to explore the development of the Quality Assurance System for Indigenous childcare services

- the Department for Family and Community Services' (now known as the Department for Families, Housing, Community Services and Indigenous Affairs) Statement of Commitment to Aboriginal and Torres Strait Islander People (Department of Family and Community Services, 2005).

Methodology

Semi-structured questions were used to obtain qualitative data from focus group discussions and individual consultations with relevant childcare and Indigenous networks, service providers, community members and government representatives. The purpose was to identify the key issues regarding licensing and regulation requirements for young children's services for Indigenous families and the service providers. A review of national and international literature regarding licensing and regulation requirements for the childcare industry, with a particular focus on the Indigenous perspective, was also undertaken and provided a context for the evidence presented from the focus groups and consultations. The data was analysed using a comparative thematic approach which enabled common themes and issues to be identified.

The sample comprised Indigenous childcare providers (202), Indigenous community members (210), and state and territory government representatives (66) from across Australia. In each state and territory a minimum of one capital city consultation and one rural/regional/remote consultation of service providers and community members was included. Metropolitan consultations were held during the Secretariat of National Aboriginal and Islander Child Care's (SNAICC) state conferences

where possible. Rural/regional/remote sites were nominated by SNAICC, the Australian Government Department of Family and Community Services and Indigenous Affairs (now the Department of Families, Housing, Community Services and Indigenous Affairs) and state and territory government representatives.

The research was conducted with attention to ethical guidelines for research with Indigenous and Torres Strait Islander people, as articulated by the National Health and Medical Research Council's 2003 *Guidelines for ethical research in Aboriginal and Torres Strait Islander health research.* These guidelines require all researchers to conduct their work according to Indigenous priorities and processes, and with respect for Indigenous values. Ethical approval to undertake the research was granted by Edith Cowan University's Human Research Ethics Committee. Importantly, the research team included Indigenous and non-Indigenous people with many years' experience working with Indigenous communities.

Limitations of the research included time constraints, the limited sample, and the contested role of government at the consultations. Many participants raised their objection to the presence of government staff, and may have been less able to voice their opinions as a result. Nevertheless, most consultations generated robust and exhaustive deliberations.

The consultations

Common standards but local interpretations

The consultations demonstrate that Indigenous populations acknowledge the importance of regulations in maintaining the quality of Indigenous services, and many people told us that Aboriginal and Torres Strait Islander populations want the same standards in their childcare services as other mainstream services:

> Community does not accept sub-standard care; our community doesn't want their children in an unsafe place (Service provider, metropolitan).

> You get offered run-down, older buildings; because you're Indigenous, you won't feel comfortable... there is this assumption, you know, that these ladies won't feel comfortable in those new buildings. These ladies, they said No! We want that one [pointing to a brand new building]. They all went, Oh why they should not have that? You only get what you are offered. You know you only get offered the old buildings and people think they don't have a choice. Stereotypical stuff (Government, metropolitan consultation, comment in relation to a remote area).

At the same time, however, they told us how difficult it was sometimes to comply with regulations because of

inadequate support and resources, and they asked for discretion and flexibility in the interpretation of licensing requirements:

> In centre-based care they did not want to have different standards. They wanted the same standards to be applicable, but they wanted a better understanding of the ways that might be applied. Example: water excursions. Our regs, some parts are flexible e.g.: appropriate programs, cultural appropriateness, individual children's needs etc., etc. That's quite flexible; things like square inches per child is not. At present that's a challenge to some services. ... they did not want some different set of standards that only applied to Indigenous children's services. They see that as not appropriate. It is more about the model being able to show that if you have a particular standard in place that's about guarantee of safety, then there might be a number of ways to achieve that safety (Government representative, metropolitan).

Thus the need to maintain high standards, while having the flexibility to make them applicable to local needs, especially in remote areas of Australia, was often emphasised. This issue also magnified the importance of consulting local communities in relation to licensing standards:

> They built a centre at X. They built it to 'normal' specs, but X children are short and skinny so you have little kids going through the fence. ... the gap they left under the fence will let the dogs go under there and the toilet seats are too high (Government, remote).

Licensing requirements also made staff more aware of what aspects of the service they had to improve:

> We are having visit at the Outside School Hours Care (OSHC) program. There are some things that we need to have in order, like the noticeboard for the menu, program, staff files, first aid certificates, blue cards and policies and procedures (Service provider, remote).

Regulations were sometimes perceived as a restriction, in that they relate to minimum standards of care rather than any guarantees of best practice:

> Licensing/regulations are restricting but they are only a minimum standard, not best practice. We want best practice for our kids not the minimum you can get away with, such as regs. They [children] deserve best practice (Service provider, metropolitan).

Comments were also made in relation to the lack of flexibility of the licensing process:

> Authorised officers sometimes can be quite pedantic about what they are looking for and not always cognisant about cultural issues (Government, metropolitan consultation).

The need to simplify the process was also noted:

> There should be less reporting, less administration, auditing, so we can focus on supporting children, families and communities. Different emphasis is needed. We focus too much on accountability that we lose the real picture of what we are for (Service provider, metropolitan).

Some of the licensing requirements were perceived by one Indigenous service provider as being too restrictive for Indigenous childcare services. These restrictions, however, are sometimes misunderstood as licensing requirements when they are, in fact, centre policies. The following comment on nappies, for example, is a centre policy rather than a licensing requirement:

> There is a difference in perception of what is important and appropriate. Some of the requirements, when you get to the nitty gritty of it, are quite irrelevant to providing quality service. Some of them, for example the ones that link to health and safety, are OK, but some of them are inappropriate. For example in some mainstream services you need to bring a child with three nappies and this and that and this is quite restrictive. Who is going to pay for all the things that are needed to meet the new regulations for example? (Service provider, metropolitan).

Issues related to compliance with licensing requirements

Cultural obligations

Cultural obligations, for example the strong community and family ties within Aboriginal and Torres Strait populations, often conflict with issues of compliance with licensing requirements: Looking after additional children whose parents had to attend certain cultural events or had important appointments was accepted by staff as a breach of regulations and funding requirements, but they saw this as part of their cultural obligations:

> Regulations say that you can't look after your own nephews and nieces, but we often look after our relatives' children who are not registered, especially during special occasions, such as funerals (Service provider, remote).

It was also noted that departmental rules are sometimes too hard for parents to understand and it was emphasised that there is a need to educate the community about the role of child care and licensing requirements:

We are licensed for 14 places so we have to knock kids back. Families don't understand the rule about only being able to have 14 kids (Service provider, remote).

The role of regulations in safeguarding children's safety, health and nutrition

Issues related to health, safety and nutrition were often raised in many rural and remote areas. Although the community consultation participants from one of the JET crèches in the remote area did not speak directly about licensing, they raised issues of the importance of children's safety, as well as good nutrition and health in general. They talked about the need for adequate outdoor space and good food. They also expressed their desire to have more outdoor space for children to play, a sandpit and adequate covered outdoor areas. The JET crèche coordinator expressed her wish to have:

Everything up to standard—bathrooms, kitchens and cupboards (Service provider, remote).

An Indigenous caregiver from an outer regional area emphasised the importance of the structural features, such as good-quality rest rooms, change rooms and the whole building in general; she also stated her concern in relation to children's safety. Community members, users of a childcare service in another area, stated that:

Rules are needed so people know that children are safe (Community member, remote).

Some caregivers commented on certain rules they have at the centre (as a result of childcare regulations) which contribute to the maintenance of children's good health:

They are not allowed to share plates or cups, or take food from other plates—as they get sick from each other that way. Instead we tell children to get a second helping, not to take others' food (Service provider, very remote).

One service provider in a regional area emphasised the importance of having trained staff as well as an appropriate child–staff ratio. Although some mandatory requirements were acknowledged during many consultations as being important to the maintenance of children's health, safety and wellbeing, they were also sometimes noted as contributors to the additional pressure on services to meet these standards. This was especially noted in relation to services in the remote areas:

Nutrition—this is very important; especially education about Type 2 diabetes. We provide breakfast, lunch, and afternoon tea. Some services will provide four meals. The Start Right, Eat Right program is going to be mandatory in X from 2006.

This is an extra expense, need for safe food-handling practices and to serve multicultural food. Centres need to send staff to training (over $1000). It is good, with the formula, as it gives you the recommended daily intake. This could help with menu planning. But for some remote centres, they are in the process of seeking donations of food to be able to prepare and serve the required meals (Service manager, remote).

As the health standards of the Indigenous children attending child care are often quite low, some services found meeting the required standards almost impossible:

Children come for a short period, when parents do their training. Children come to the centre with constant diarrhoea, if the staff followed the rules, they would have no children (Childcare worker, regional).

Differences in understanding the role of child care

An understanding of the role of child care within some Indigenous communities is different from that found within mainstream services. These differences reside within the concept of mainstream child care as a place for healthy children, with regulations preventing sick children from attending owing to the risk of cross-infection. For Indigenous communities, however, child care is seen as the:

place where you can bring little sick kids, feed them, make them healthy (Community member, very remote).

For Indigenous communities, the role of child care is also to provide support to families:

Some kids come with diarrhoea, if it's bad we ask them to take the child to the hospital. Sometimes we get underweight kids here—we feed them and help make them better. We give them healthy food to make them strong … In the morning with the parents, we wash hands, have breakfast—staff have breakfast too—and we give the leftovers to the mothers, children brush their teeth, we check their ears, get [them to] blow their noses (Service provider, very remote).

Qualifications

One of the barriers to meeting licensing standards right across Australia is the shortage of qualified Indigenous staff, and there are a number of inter-related factors inherent in the requirement for qualified Indigenous staff. These include:

- the level of understanding of the regulation requirements and the ability to complete the relevant paperwork
- the number of trained childcare staff required by the service
- the necessity for trained staff being on the premises at all times.

Although problems about the level of responsibility that newly trained Indigenous staff face were acknowledged, because of their general shortage there was a feeling that:

> If there were more qualified staff available a lot of the issues to do with service compliance and inconsistencies might be reduced (Government, metropolitan).

The importance of training received from one of the training institution lecturers in helping staff of one childcare centre to comply with regulation requirements was noted:

> We are writing rules for policy, such as keeping kids out of the office and kitchen (Service provider, very remote).

A lack of qualified relief staff was another of the problems identified during a number of consultations:

> When childcare staff had to attend training or go on leave, we might have to close the centre (Service provider, regional).

Flexible approaches to training and licensing were seen as providing solutions to the shortage of trained staff:

> MACS [Multifunctional Aboriginal Children's Centres] began with exemptions for non-qualified, then five staff, in partnership with X University, did their training off-campus to qualify. ... in 2000, 25 graduated from Y Uni—[this was done through] on-site training and staff back-up; [relief staff provided] cover while staff was away on training (Community members and service providers, metropolitan).

A need for the regulations to address the overall quality of staff, not just staff qualifications, was also raised:

> ... we realised we would have to walk out if we did not get qualified; we are licensed and had to follow regs and that would have gone horribly wrong [if staff did not obtain formal qualifications]; that's [what is] not recognised in the licensing is who is the best person for our kids to have spend time with ... we all realise that training is important, but fostering of those right people—get the right person first, then provide the training ... (Service provider, metropolitan).

A further barrier to the provision of qualified Indigenous childcare workers in some remote communities was attributed to the lack of opportunities to obtain qualifications required by regulations:

> You speak to people [training providers] and they say, well they are not going to stay out at X or Y for a week to do a block training, or no, they [trainees] will have to come down to Z (a bigger town); but there is no-one there to mind the children. There is a childcare centre at X, but no one to work in it. An actual building [is there], but no one to work in it. They have advertised for a qualified worker, but nobody [applied]; and it's a circular thing; no training ... (Government, metropolitan consultation).

Government support

More government support for childcare services to help them comply with the requirements was noted:

> Currently we don't give enough support and training for Indigenous people and the paperwork is too much (Support service provider, metropolitan).

Owing to the lack of childcare training and problems with English literacy, even using documents which provide step-by-step instructions (such as the NT childcare workbook cited above) was presented as a problem. One government worker suggested that, in order to succeed, centres need a lot of help from support agencies. She also stated that some centres receive intensive support, but it is not equally spread amongst services:

> Some places receive intensive support, sometimes a week every fortnight, dealt with licensing, Indigenous Professional Support Unit (IPSU). Provided an extra project person (Government, remote).

Funding

Funding, or lack of, is a further barrier to Indigenous services complying with the regulations. In particular, adequate funding is required to address the qualified staff shortage and to develop pools of qualified relief staff, to provide training to staff in relation to licensing requirements, and to provide for structural improvements to existing buildings:

> When budgets are tight, the first thing that goes is the training budget. But this is hard where you have mandatory training requirements to train staff about new policy i.e. occupational health and safety, first aid etc. We are always on the lookout for training opportunities being delivered by the Department (Child Care Manager, statewide consultation with service providers).

Better models of funding, for example budget-based funding, were noted as a preferable option and a way to ameliorate some of the above disadvantages:

> We should be giving the services funding that lets them meet requirements under licensing and quality (Government, metropolitan).

We run professional development for the centres—varies because of the budget—we had money especially for OSHC, so we ran these. In 2003, the new licensing standards [came in] … so we had regional groups to have a look at the new standards and for people to ask questions and us to explain differences with new requirements; we ran this right around the State. It's budget really … we would like to do more. … we do provide capital upgrade where we can for licensing issues. For X we gave money to replace glass with safety glass. We have to prioritise. It is usually safety-type licensing issues—no formal application process; we look at when we license or re-license (Government, metropolitan).

Concerns were expressed in relation to the compliance of OSHC services in X (remote area) required from 2008. These concerns revolved around insufficient flexibility in the legislation and the issue of compliance with building requirements [in remote areas] because of the high cost of materials and shortage of labour:

We have been waiting months to have the broken window fixed. There is only one builder so we have to wait our turn. Then if there is lots of break-ins we have to wait longer. Now we just put furniture in front of it so the kids cannot go near it. That wall over there used to be a window, but we got broken into so many times we replaced it with a solid wall (Service provider, very remote).

Regulations as a barrier to flexible service delivery

Becoming a licensed childcare service provider was, in itself, perceived as an obstacle to a flexible delivery of Indigenous services:

The issue with Indigenous child care is how broad it can be. Once you build a building and the Department licenses it, suddenly the flexibility is lost 'cause you can only do what you can do (Government, metropolitan).

They feel safe; they have always come here from playgroup [age]. I am their Aunty and now to some I am Nana. We are working up a program for the teenagers with the centre next door. So the teenage girls go there, the boys go out in the bush and pick up … [wild plums]. They love it. But it is too rigid with the Child Care Benefit rules [implying that regulations would not allow these children to be included in the program owing to their age] (Service provider, remote).

The provision of Indigenous family day care was raised as an issue in some states. These issues were linked to the state regulations requirements of house ownership and, as fewer Indigenous people own their houses compared to the general population, this becomes a barrier for the provision of such care in such locations. The possibility of licensing a person in a public building as a family day care worker was mentioned:

That is venue care. And that's all well, except [there is a problem with] state licensing; the regulations in this state, won't allow it. There is no way you can go to a public building and run Family Day Care. I think other states do that, you can run venue care. Other than X … Yes … Y or Z. The minister is really big about that. They are trialling them in Z. We looked at that … and in venue arrangement we would bypass all the problems of licensing. It might give parents a little bit more choice. Have been changing the regulations for years, and still have not done [this]. It's been a lot of discussion in the state government (Government, metropolitan).

Developmental licenses

A gradual licensing process, during which Indigenous services could work on meeting regulation requirements (as currently exists in the Northern Territory), was seen to be a beneficial approach. Such a process would allow for gradual growth and development into a form of service that meets the needs of the local community and capitalises on its strengths:

Centres want quality child care, but they do not want to be rushed. In the NT new legislation is being developed in relation to developmental licences. This legislation will allow services to work their way towards a goal [obtaining a licence] (Government, metropolitan).

One service provider with extensive childcare experience stated:

Getting staff is a big issue and there needs to be incentives to bring staff in. [To develop a licensed service] you need to start with playgroup, educate the staff through playgroup, educate community about child care before you bring in the building, because the building is the easy bit (Service provider, remote).

Some possibilities of developmental licensing were explored:

How can you fund an unlicensed service? As with JET crèches it would be about not charging fees. Wherever care is provided for fee-for-service basis, it has to be licensed. Which is the building will be built to quality standards, so you create that seamless approach [when the centre expands and is ready to be licensed, the building meets the required standards].

… I think that this developmental work, that capacity-building work is really critical and we are going to try to do this simultaneously, because

for us with our current funding approval we will be under some pressure to show the tangible outcomes, and capital is a tangible outcome; but at the same time we don't want buildings to put pressure on communities to deliver something they are not ready to deliver. Because ideally, we would want to be in a position where we could start a service as a licensed service, then we would do so. We will use the unlicensed option if we need to (Government, metropolitan).

Gradual service development not necessarily linked to the JET crèche model was emphasised in some consultations:

JET crèches are tied to particular events, when those events finish they close down. They are time-linked. Should be developmental, work to get them [services] through [licensing]; they need to understand what is entailed, so they can make real choices about how they want to develop. We were talking to wheatbelt communities recently; they need hands-on help to know where to go to get advice, so they know (Government, metropolitan)

Discussion

Both the literature and the data from the consultations indicate that regulation requirements and licensing standards are important contributors to the provision of quality child care for Aboriginal and Torres Strait Islander children (Child Care Regulations Consultative Committee, 2008; Fasoli et al., 2004). Consultation participants stressed that they wanted the same standards as the mainstream services and did not want to settle for sub-standard care.

There are important factors that need to be taken into account, however, if universal standards of care are to be achieved. This would include the need for multiple understandings of quality (Dahlberg et al., 1999), as understood by Australia's diverse populations, to be incorporated into policy and practice (Fasoli et al., 2004; Trigwell, 2000). It has been noted how a lack of reference to diversity underpins a 'white middle-class' interpretation of the concept of quality, contributing towards increased inequalities between children 'as families reject programs that fail to recognise the merits of their views and values' (Bown et al., 2008, p. 5). To address this, attention would have to be paid to issues such as:

■ the design of services to meet local needs and conditions, reflecting community cultural obligations and expectations

■ rules and limits which would allow for flexibility but at the same time would not compromise children's safety and health in general

■ workforce issues, with innovative training models and flexible employment conditions.

All these factors have been identified during the consultations for this study and are consistent with other research findings (Child Care Regulations Consultative Committee, 2008; Fasoli et al., 2004; Meeting of representatives of Aboriginal and Torres Strait Islander childcare workers, Sydney, 26–27 May, 1994, cited in the Law Reform Commission Interim Report, 1994).

A further difficulty in achieving universal standards of care, particularly as they relate to compliance with regulations, has been noted, both in the literature and in the consultations, as a consequence of inadequate support and resources. This ranges from the shortage of qualified Indigenous childcare staff and the lack of adequate and appropriate structural features such as good-quality buildings, to the general lack of workplace flexibility (Meeting of representatives of Aboriginal and Torres Strait Islander child care workers, Sydney, 26–27 May, 1994, cited in the Law Reform Commission Interim Report, 1994; Trigwell, 2000). All these issues need to be contextualised to the diverse needs of communities in different states and territories and, in particular, to the communities living in extremely remote and isolated areas (Fasoli et al., 2004).

Thus, to meet locally diverse needs, more flexibility in the licensing process is needed (Fasoli et al.,2004; Meeting of representatives of Aboriginal and Torres Strait Islander child care workers, Sydney, 26–27 May, 1994, cited in the Law Reform Commission Interim Report, 1994; Trigwell, 2000). This would mean allowing Indigenous childcare services to gradually build their capacity to meet the regulation requirements and develop a service that meets the needs of local communities. Fasoli et al. (2004) have reported on some of the ways this has been achieved in the Northern Territory, through a model of developmental licensing. This is a process which involves gradual growth and development of the service into a form that meets the needs of the local community and capitalises on its strengths (Fasoli et al., 2004). As the consultations emphasised, such a model would enable Indigenous service providers to offer the quality care considered essential.

The achievement of quality childcare services for Australia's Aboriginal and Torres Strait Islander children, their families and communities, depends upon licensing and regulation standards being made relevant to them, with appropriate supports and infrastructure provided to ensure their progress through the system.

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